IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1-18-cv-2987

CHRISTOPHER YOUNG,
Plaintiff,

v.

BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN and the NFL PLAYER DISABILITY & NEUROCOGNITIVE BENEFIT PLAN,
Defendants.

PLAINTIFF'S COMPLAINT

Christopher Young seeks total and permanent disability (T&P) benefits under the Bert Bell/Pete Rozelle NFL Player Retirement Plan and the NFL Player Disability & Neurocognitive Benefit Plan. The Retirement Board of the NFL Retirement Plan abused its discretion in denying Young disability benefits under the plans.

I. PARTIES

1. Plaintiff Christopher Young is a resident of Aurora, Colorado.

2. Defendant, Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Retirement Plan"), is a multi-employer pension and welfare benefit plan that can

be served with citation by serving the NFL Retirement Board, Bert Bell/Pete Rozelle NFL Player Retirement Plan, 200 St. Paul St., Suite 2420, Baltimore, MD 21202-2040.

3. Defendant, NFL Player Disability & Neurocognitive Benefit Plan ("Disability Plan"), is a multi-employer welfare benefit plan that can be served with citation by serving the Disability Board, NFL Player Disability & Neurocognitive Benefit Plan, 200 St. Paul St., Suite 2420, Baltimore, MD 21202-2040.

II. JURISDICTION AND VENUE

4. This lawsuit is a claim for disability benefits brought under the authority of 29 U.S.C. §1132(a)(1)(B). This court has jurisdiction over these claims under 29 U.S.C. §1132(e)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Venue is proper in the District Court of Colorado in accordance with 29 U.S.C. 1132(e)(2) since the disability benefit payments owed under the plans are to Young at his home in Aurora, Colorado.

III. STATEMENT OF FACTS

5. Christopher Young played safety in the National Football League for four seasons. He played for the Denver Broncos from 2002 until 2005.

6. Shortly after his NFL career ended, Young submitted a Line-of-Duty disability benefits claim to the NFL Retirement Plan administrators due to his significant football-induced impairments. Line-of-Duty Benefits are awarded to

players who have a "substantial disablement" due to playing NFL football but who are not totally disabled. Line-of-Duty benefits are partial disability benefits.

7. The two groups deciding whether or not a player qualifies for benefits available under the plans are the Disability Initial Claims Committee ("DICC"), an entity consisting of two people, one appointed by the NFL Players Association and one appointed by NFL management, and the NFL Retirement Board ("Board"), consisting of six people, three appointed by the NFL Players Association and three appointed by NFL management.[1] Following the requirement that a benefit claim made under a pension or welfare plan governed by ERISA receive an initial decision and then receive a full and fair review of any adverse benefit determination by a plan fiduciary, the DICC is the initial decision maker and the Board members are the plan fiduciaries who conduct the fiduciary review of a claim that has been denied.

8. The Disability Plan has the same structure as the NFL Retirement Plan. The Disability Board consists of the same people who sit on the Retirement Board.

9. The Plan administrators require that a player undergo at least one independent medical exam by one of their selected physicians as a condition of awarding benefits. After an independent medical exam by an orthopedic expert selected by the Plan administrators, Young was determined to have a whole body

[1] The DICC and the Board, and the individuals who work in the Plan office, are sometimes collectively referred to as the Plan administrators. The NFL Plans are Taft-Hartley plans, requiring that the decision-making bodies (the DICC and the Retirement Board) have an equal number of representatives, half appointed by the players union and half appointed by management.

impairment of 28% due to orthopedic injuries sustained while playing professional football. Young reported sleep disturbances and depression at that time.

10. In June 2014, Young applied for T&P benefits provided under the Plans. T&P benefits are available to NFL players who are found to have a disability that prevents them engaging in any occupation for profit, i.e. a total disability. The definition of "any occupation for profit" does not include occupations that pay less than $30,000 per year. In his application, Young indicated that the following conditions prevented him from earning at least $30,000 per year: depression, paranoia, mood swings, memory loss, and anxiety. A condition is deemed to be "permanent" for the purposes of T&P benefits if the disability has persisted or is expected to persist for least twelve months, excluding any reasonably possible recovery period.

11. With his application Young submitted a report from psychiatrist Jill Anderson, PhD, who indicated that Young was markedly limited in his ability to complete a normal workday or workweek due to psychiatric impairments, namely depressive disorder, anxiety disorder, and paranoia.

12. After receiving his application, the Plan Administrators sent Young to neuropsychologist Johnny Wen, PhD, and neurologist Edward O'Connor, M.D. Dr. Wen found that Young was impaired by anxiety, depression, and paranoia, but could not determine whether he was disabled due to neuropsychological conditions. Dr. O'Connor found that Young suffered from severe anxiety and

severe depression but determined that Young was not disabled from neurological conditions.

13. In September 2014, the DICC denied Young's claim for T&P disability benefits. The DICC based its decision upon the reports of Dr. Wen and Dr. O'Connor.

14. Young timely appealed the denial. He indicated depression, anxiety, memory loss, neck pain, back pain, and hip issues prevented him from working. With his appeal he included a report from a neurologic evaluation conducted in November 2014 by Andre Fredieu M.D. at the Carrick Brain Centers that found that he had a significant neurocognitive impairment as a result of traumatic brain injury. During his appeal he also submitted a psychological evaluation done by psychologist Leslee Bednark. After performing a psychological evaluation, Ms. Bednark concluded that Young was disabled due to depression and anxiety.

15. Once the Retirement Board received his appeal, Young was sent to see Plan neuropsychologist Stephen Macciocchi, PhD and neurologist Barry McCasland, M.D. Dr. Macciocchi found that Young was not disabled due to neurocognitive factors but he indicated that Young "had clinically plausible psychiatric-psychological symptoms that may limit occupation functioning" that merited further investigation. Dr. McCasland determined that Young was impaired by depression with anxiety and paranoia but had no neurologic limitations. Dr. McCasland indicated that Young's impairing conditions from

depression and anxiety and paranoia had existed, or could be expected to exist, for at least 12 months from the date of their occurrence.

16. In his report to the NFL Plan office, Dr. Macciocchi summarized his findings as follows:

> "In summary, despite evidence of suboptimal performance during his first neuropsychological examination (Dr. Wen), Mr. Young's current examination does not reveal evidence of psychometrically reliable neurocognitive impairment that would render him 'totally disabled to the extent he (is) substantially unable to engage in any occupation for remuneration or profit'. His examination revealed low average intellectual skills and unimpaired, executive processing speed and memory skills based on normative expectations. Persons who are unable to engage in any type of employment would be expected to have approximately 50% of their test scores in 2 critical areas of functioning such as executive and memory skills fall below T=30 (moderate impairment), which was not observed during Mr. Young's current examination. *In contrast, there is clinically plausible evidence from his prior and current examinations that Mr. Young has psychological-psychiatric health problems that would be expected to be a barrier to obtaining and maintaining employment if not effectively treated. Consequently, his psychiatric health must be examined by an expert in psychiatric medicine to determine whether psychological-psychiatric health problems preclude return to work."* (emphasis added).

17. Based upon Dr. Macciocchi's recommendations, the Plan administrators sent Young for an examination with psychiatrist Raymond Faber, M.D. As a result of his examination of Young on June 30, 2015, Dr. Faber concluded that Young was disabled due to depression and anxiety, and that he would be disabled due to depression and anxiety from six to nine months.

18. After receiving Dr. Faber's report, the Retirement Board deadlocked on whether or not Young was disabled and entitled to T&P disability benefits under the Plans. Pursuant to Retirement Plan Section 8.3, the medical examination reports were sent to a Medical Advisory Physician (MAP) for a final and binding opinion on whether Young's psychiatric impairments rendered him totally and permanently disabled.

19. Young's records were sent to MAP psychiatrist Steven Epstein, M.D. Dr. Epstein followed the opinions of Dr. Faber. On September 29, 2015, he concluded that Young was disabled due to depression, anxiety, and possibly substance abuse disorder for a six-month period. Dr. Epstein proposed a treatment plan and then recommended that Young's disability status be re-examined in six to nine months.

20. After receipt of Dr. Epstein's report, the Retirement Board concluded that Young was not disabled by a neurological or neurocognitive disorder. Further, the Board concluded that Young was not disabled by a psychiatric disorder. The Board based its decision upon the final and binding report of MAP Dr. Epstein. According to the Board, Dr. Epstein's conclusions established "that (Young's) psychiatric disability was not "permanent" because it was not expected to persist for at least twelve months from the date of its occurrence, excluding any reasonable possible recovery period.

21. Young was advised that he had exhausted the administrative claims process under the Plans and his only alternative, if he wanted to challenge the Board's decision, was to file suit under Section 502(a) of ERISA.

22. Young exhausted his administrative remedies as required by the Plans and by ERISA.

23. Young has worked sporadically for the Denver Parks and Recreation Department. For a significant period of time, he was not able to engage in full-time work due to his psychiatric impairments. In 2014 he earned $8124, in 2015 he earned $10,369, in 2016 he earned $16,221, and in 2017, due to limited improvement in his depression, anxiety, and paranoia, as well as very lenient supervisors who allowed him to take off when his depression and anxiety prevent him from working, he earned $47,453.

IV. CAUSES OF ACTION UNDER ERISA §1132(a)(1)(B)

Claim for Benefits Under §1132(a)(1)(B)

24. The Board's denial rests on the conclusion that Young's disabling depression and anxiety lasted less than twelve months from the date of its occurrence, i.e. was not "permanent" as that term is defined in the Retirement Plan. The Board's decision was an abuse of discretion. There is no medical evidence to support the Board's position that the onset date of Young's disabling depression and anxiety was June 30, 2015 (the date of Dr. Faber's examination). Rather, the only reasonable conclusion from the medical evidence is that Young was disabled by psychiatric impairments at the time he applied for T&P benefits,

well before Dr. Faber's examination and Dr. Epstein's review of the medical records. Under the Plans, he is entitled to benefits beginning two months prior to his disability application and for the period that he remains T&P disabled. Therefore, he is entitled to T&P disability benefits beginning in April 2014.

V. RELIEF REQUESTED

Claim for Benefits Due Under 1132(a)(1)(B)

25. Young seeks Inactive A T&P benefits from the Retirement Plan in the amount of $4000 beginning April 2014. He also seeks benefits from the Disability Plan in the amount of $6000 per month beginning April 2014. The benefits under the Disability Plan increased to $7,250 beginning January 1, 2016. Young concedes that although his earnings are largely due to the graciousness of the Denver Parks and Recreation Department, he is not entitled to Plan benefits beginning January 1, 2017 because he was able to earn over $30,000 that year.

26. As a result, Young is entitled to the sum of $90,000 for 2014 (9 x $10,000: $4000 per month from the Retirement Plan and $6,000 from the Disability Plan). He is entitled to sum of $120,000 for 2015 (12 x $10,000: $4,000 per month from the Retirement Plan and $6,000 per month from the Disability Plan). Young is entitled to the sum of $135,000 for 2016 (12 x $11,250: $4000 per month from the Retirement Plan and $7,250 from the Disability Plan).[2]

27. The sum of benefits owed to him is $345,000.

[2] Effective January 1, 2016, the Disability Plan increased the disability benefit from $6,000 per month to $7,250 per month.

VI. ATTORNEYS' FEES

28. Young prays for his attorneys' fees and costs under 29 U.S.C.A. 1132(g).

PRAYER

WHEREFORE, Young prays for back benefits in the amount of $345,000. He also prays for his attorneys' fees, for pre-judgment interest at the maximum rate allowed by law, post-judgment interest, and for such other and further relief, both at law and in equity, to which he may show himself to be justly entitled.

Respectfully Submitted,

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